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the Elimination
of all Forms of
Racial Discrimination

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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Fifty-fourth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION

Concluding observations of the Committee on the
Elimination of Racial Discrimination

Austria

1. The Committee considered the eleventh, twelfth and thirteenth periodic reports of Austria (CERD/C/319/Add.5) at its 1305th and 1306th meetings (CERD/C/SR.1305 and 1306), held on 1 and 2 March 1999. At its 1327th meeting, held on 16 March 1999, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the eleventh, twelfth and thirteenth periodic reports submitted by the Government of Austria in one document and the opportunity thus offered to continue its dialogue with the State party. Although the report followed the guidelines, the Committee is of the view that the information in it was too concise, was too focused on legislation and administrative measures, failed fully to address the Committee's concluding observations relating to the previous report of the State party, and did not sufficiently consider the extent to which residents benefited in practice from the protections promised in the Convention. The Committee expresses its appreciation for the constructive and concrete dialogue with the delegation and the additional information provided in response to the questions asked.

B. Positive aspects

3. The Committee notes with satisfaction that the State party has condemned genocide as a crime under international law, and trusts that all acts of genocide will be condemned without any distinction as to time, place or group of victims. In this regard, the Committee welcomes the establishment of the National Fund for Victims of National Socialism (1995), which offers a scheme for compensation of all the victims of genocide.

4. The Committee welcomes the information contained in the report concerning educational measures which provide for the teaching of the principles of tolerance and peaceful coexistence in a multicultural society. Satisfaction is also expressed in relation to the efforts undertaken by the State party to raise awareness and promote action against all forms of racial discrimination. The Committee notes, in this regard, the establishment of radio programmes for this purpose.

C. Principal subjects of concern

5. While the Committee is aware that the Convention has been incorporated into Austrian domestic law (Federal Constitutional Act, 1973) and welcomes the judgements of the Constitutional Court (1994/1995) which provide for equality in the treatment of aliens, concern remains about the element of subjectivity in the rule that "decisions refusing an alien equal treatment may only be admissible if and when there is a reasonable justification".

6. Concern is expressed that the immigration policy of the State party, contained in the Aliens Act of 1997, classifies foreigners on the basis of their national origin. The Committee considers that the concept and effect of this policy may be stigmatizing and discriminatory and, therefore, contrary to the principles and provisions of the Convention.

7. While the Committee welcomes the measures taken by the State party for the protection of the rights of the Slovenian, Croatian and Hungarian minority groups, concern remains at the lack of corresponding measures for other "national ethnic minorities", in particular Czechs, Slovaks and Roma, as well as for those who are sometimes referred to as "new minorities". Concern is also expressed at the lack of legal protection for residents of foreign origin against discrimination committed by Austrian citizens.

8. While the Committee notes with appreciation the State party's efforts in the field of legislative reform, especially the amendments to the Austrian Penal Code (sects. 281 and 283), which criminalize racist propaganda and the incitement to racial hostility, the Committee is nevertheless still concerned that the condemnation of such acts is qualified by a reference to public peace and that article 4 (b) of the Convention is not fully implemented, notably as regards prohibition of organizations which promote and incite racial discrimination. Concern is also expressed about the number of reported incidents of xenophobia and racial discrimination, including acts of anti-Semitism and hostility against certain ethnic groups.

9. The Committee expresses its concern that, seven years after it drew the attention of the State party to the absence of sanctions against racial discrimination in the private sector, little progress has been made in fully implementing the provisions of articles 5 (e) and (f). In addition, the Committee expresses its concern that non-citizens are not currently eligible for participation in work councils.

10. Concern is expressed about reports of serious incidents of police brutality in dealing with persons of foreign origin and ethnic minorities, including the Roma.

D. Suggestions and recommendations

11. The Committee recommends that the State party introduce comprehensive legislation to prohibit racial discrimination in all its forms, covering both citizens and foreigners. Furthermore, it recommends that the State party consider amending the relevant provision in the Constitution Act implementing the Convention by deleting the word "sole" in connection with the basis of illegal racial distinctions.

12. The Committee encourages the State party to continue exploring ways of providing specific protection to all ethnic groups living in Austria. The Committee further recommends that the State party include in its next report more detailed information on the demographic composition of the Austrian population, in the light of paragraph 8 of the reporting guidelines. Information on the socio-economic situation, particularly the unemployment rate in the various ethnic communities, would be appreciated.

13. The Committee urges the State party to review those elements of its current immigration policy which classify foreigners on the basis of their national origin. In its forthcoming report the State party is requested to include information on current asylum practices.

14. The Committee recommends that the State party take the necessary steps to implement article 4 (b) of the Convention. The Committee further recommends that the State party include in its next report information on complaints of discrimination under article 4 of the Convention, the prosecution by the authorities of such offences, including criminal attacks against members of certain ethnic groups, as well as the action taken by the Ombudsman and by the competent courts. Where appropriate, information on reparation granted to victims, in accordance with article 6 of the Convention, would be appreciated.

15. The Committee recommends that the State party review its provisions for implementing article 6 of the Convention. In its forthcoming report, the State party should address, inter alia, the effectiveness of the protection and the adequacy of the remedies provided.

16. The Committee recommends that the State party consider withdrawing its declarations regarding articles 4 and 5 of the Convention.

17. It is further suggested that the State party consider providing education and training on racial tolerance and human rights issues to law enforcement officials and police officers, in accordance with article 7 of the Convention and General Recommendation XIII of the Committee. In addition, the Committee suggests that the State party review the adequacy of its measures for investigating allegations of police brutality and abuse of office.

18. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of State Parties to the Convention.

19. It is noted that the State party has not made the declaration provided for in article 14 of the Convention, and some members of the Committee requested that the possibility of making such a declaration be considered.

20. The Committee suggests to the State party that its reports and the present concluding observations be widely distributed to the public. The Committee recommends that the State party's next periodic report, due on 8 June 1999, be an updating report and that it address all the points raised during the consideration of the eleventh, twelfth and thirteenth reports.